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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/664,533	09/18/2000	Vernon E. Staton	58299.000004	4644
26694	7590	03/09/2004	EXAMINER	
VENABLE, BAETJER, HOWARD AND CIVILETTI, LLP			WALLS, DIONNE A	
P.O. BOX 34385			ART UNIT	
WASHINGTON, DC 20043-9998			PAPER NUMBER	

1731

DATE MAILED: 03/09/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/664,533

Applicant(s)

STATON ET AL.

Examiner

Dionne A. Walls

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 24 November 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1,6,17 and 25-34 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 25,26,28 and 29 is/are allowed.
- 6) ☒ Claim(s) 1,6,17,27 and 30-34 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION*****Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on November 23, 2003 has been entered.

***Double Patenting***

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 1, 6, 17, 27 and 30-34 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 8-9 and 15 of

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Staton et al (U.S. Patent No. 6,176,970). Although the conflicting claims are not identical, they are not patentably distinct from each other because of the following:

Regarding claims 1 and 17, it corresponds to claim 8 of US. Pat. No. 6,176,970. It differs in that it discloses a method of subjecting a "fibrous material" to explosive forces; however, this claimed method anticipates a method of subjecting a "material" to explosive forces. Also, it follows that an interior cross sectional shape of the claimed vessel would be, obviously, perpendicular to the first direction.

Regarding claim 6, a vessel which is a pipe would inherently have a "semi-cylindrical" bottom.

Regarding claim 27, it would have been obvious to one having ordinary skill in the art at the time of the invention to utilize water as the liquid since such liquid is conventionally known as the medium in which materials are subjected to explosive forces. Use of such medium is also evidenced by the claim 14 embodiment of the same reference. Further, regarding claims 30 and 31, it follows that the water would contain some sort of impurity/bacteria and/or pathogen since, in almost any liquid material – especially water – there is bound to be an impurity therein.

Regarding claim 32, which corresponds to claim 6 of US. Pat. No. 6,176,970, it follows that an interior cross sectional shape of the claimed vessel would be, obviously, perpendicular to the first direction.

Regarding claim 33, it would have been obvious to one having ordinary skill in the art at the time of the invention to subject a wood product to explosive forces since it is known to do so, as evidenced by the claim 9 embodiment of the same reference.

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Regarding claim 34, it would have been obvious to one having ordinary skill in the art at the time of the invention to provide water as the liquid – which contains sodium sulfide – since it is known to do so, as evidenced by the claim 14 embodiment of the same reference.

### ***Allowable Subject Matter***

4. Claims 25-26 and 28-29 are allowed.
5. Claims 1, 6, 17, 27 and 30-34 would be allowable if a Terminal Disclaimer, pursuant to the above Double Patenting rejection, is filed.

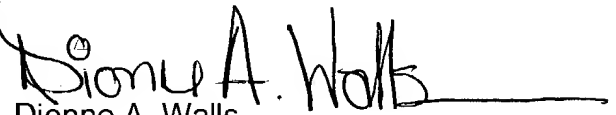
### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dionne A. Walls whose telephone number is (571) 272-1195. The examiner can normally be reached on Mon-Fri, 7AM - 4:30PM (Every other Friday off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Steven P. Griffin can be reached on (571) 272-1189. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Dionne A. Walls  
Primary Examiner  
Art Unit 1731

March 3, 2004